IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3223 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRABHAI BHAGWANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR ND GOHIL, AGP for Respondent No. 1 and 2

Respondent No.3 served.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/07/2000

ORAL JUDGEMENT

1. The petitioner, aggrieved by an order passed by the Deputy Collector, Junagadh, in Revision Application No.6 of 1988, has approached this Court with this petition under Articles 226 and 227 of the Constitution.

2. The facts of the case, in a narrow compass, are that, in the year 1981, on the 23rd January, permission for non-agricultural use was granted by the Taluka Development Officer, Mendarda, in respect of Survey No.68, admeasuring 0.38 Gunthas, on certain conditions. Those conditions were fulfilled. One of the conditions was that a particular parcel of land was required to be kept open for public purpose. That condition was also fulfilled. Later on, as it was found that the piece of land which was kept open for public purpose could not be utilized for the purpose, an application was made on the 15th March, 1982 for re-grant of that piece of land on payment of premium. Again, the Taluka Development Officer, Mendarda, by an order dated the 27th April, 1982, allowed that application and re-granted that piece of land to the petitioner. Nothing happened thereafter and the land was developed by the petitioner and construction was made for residential purposes. A certificate, in this regard, was also issued by Gram Panchayat, Moti Khodiyar. Suddenly, a notice came to be issued by the Deputy Collector, Junagadh, in 1988 in Revision Application No.6 of 1988, calling upon the petitioner to show cause why the permission for non-agricultural use granted by the abovesaid orders may not be cancelled. After hearing the parties, the learned Deputy Collector, passed the impugned order dated the 31st December, 1989. Aggrieved by the said order, the petitioner has approached this Court by this petition.

3. Learned Deputy Collector observed that re-grant of land is illegal and that there is no resolution passed by Executive Committee of Taluka Panchayat, Mendarda, for non-agricultural use, as contemplated under Section 65 of the Bombay Land Revenue Code and, therefore, this suo motu revision was initiated. The learned Deputy Collector observed that the Taluka Development Officer has no jurisdiction to permit non-agricultural use under Section 65 of the Land Revenue Code, but the power vests with the Executive Committee of the Taluka Panchayat and the order can be passed only after such Committee accords sanction by appropriate resolution. In the instant case, no such procedure was followed, no permission of the Executive Committee was taken, opinion of the concerned department has not been obtained and the order is passed within a short spell of 17 days. It was observed that the orders were passed under some pressure. The orders granting permission for non-agricultural use and re-grant of land were, therefore, set aside.

4. Mr. Y.S. Lakhani, learned advocate for the

petitioner, submitted that the order of the Deputy Collector is based on the fact that the permission for non-agricultural use was granted by the Taluka Development Officer without jurisdiction or authority. This observation is not correct. According to Mr. Lakhani, this Court in the case of Yashkamal Builders v. State of Gujarat, 1989(1) GLH 177 has taken a contrary view. Mr. Lakhani submitted further that the suo motu action initiated by the Deputy Collector was after a lapse of seven to eight years, during which time, constructions have been made and people started staying in the house. The action, having been taken after an unreasonable lapse of time, may not be supported. In support of his submission, Mr. Lakhani has placed reliance on the decision of this Court is the case of Jiviben Kalaji Bapuji v. State of Gujarat & Ors., 1998(2) GLH 556 and Ranchhodbhai Lallubhai Patel v. State of Gujarat & Ors, 1984(2) GLR 1225, and the decision of the Apex Court in the case of Ram Chand and Ors. v. Union of India & Ors, (1994) 1 SCC 44. Mr. Lakhani submitted that, after non-agricultural use permission was granted, the land was plotted and some of the plots were sold to persons who are not party to these proceedings, they have constructed their residential houses and are residing therein. This aspect was brought to the notice of the learned Deputy Collector. Still, they have not been called upon by the learned Deputy Collector and, therefore, if this order stands, it would affect the right of those persons who have not been heard. Mr. Lakhani, therefore, submitted that this petition may be allowed, the order impugned may be quashed and set aside, restoring the orders of grant of non-agricultural use and re-grant of the land.

5. Mr. Gohil, learned Assistant Government Pleader, has opposed this petition on behalf of respondents No.1 and 2. Respondent No.3, though served, has chosen not to contest. Mr. Gohil submitted that the petitioner cannot agitate the cancellation order as the learned Deputy Collector has observed that it is in violation of Section 65 of the Land Revenue Code and, therefore, the petition may be dismissed.

6. Having regard to rival side contentions, the first and foremost aspect that requires consideration is whether the impugned action could have been taken by the Deputy Collector after lapse of about seven to eight years. There is, of course, no limitation prescribed for the purpose. But when a public Officer takes an action, his action is expected to be reasonable, fair, equitable and prudent. Action may not be taken at a stage and in a

manner which may unequitable. In this regard, decision in the case of Jiviben (supra) may be taken into consideration. In that case, this Court, after considering various provisions of law and precedents came to conclusion that powers under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 or revisional powers under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 could be exercised within reasonable time. In that case, the proceedings were initiated suo motu after a long lapse of time and the Court observed that this is not permissible. In the instant case, the proceedings are intiated after about 7-8 years. Further, it is nobody's case that the non-agricultural use permission was obtained or the re-grant was obtained under a fraud and, therefore, this delayed action cannot be upheld.

7. Another relevant consideration is that the land is developed, the land has been plotted and plots have been sold to third party. It may be noted that this aspect was brought to the notice of the learned Deputy Collector and still he deemed it fit not to call upon those persons who are directly interested or those who would be directly affected by the impugned order. For no fault on part of the petitioner or on part of those plot holders, a situation would be created against equitable interest of such persons if the impugned order is permitted to stand and, therefore also, the petition deserves to be allowed.

8. So far as observation made by learned Deputy Collector, regarding want of power/authority of the Taluka Development Officer under Section 65 of the Code is concerned, the decision of this Court in case of Yashkamal Builders v. State of Gujarat (supra) may be profitably employed in service. It was held that the powers conferred on Collector under Section 65 of the Bombay Land Revenue Code is an executive power or power of administrative character. Said powers were transferred or delegated to the District Panchayats and Taluka Panchayats. When Taluka Panchayats exercise powers under Section 65 of the Code, it is an executive or administrative power and, therefore, such power would vest in Taluka Development Officer under Section 123(1) of the Gujarat Panchayats Act, 1961. It was held that the Taluka Development Officer is empowered to grant permission for non-agricultural use. The order of the Deputy Collector, therefore, is founded on erroneous interpretation of law and, therefore also, the order cannot hold ground.

9. For the foregoing reasons, the petition deserves to be allowed and the same is allowed. The order impugned of Deputy Collector, Junagadh, in Revision Application No.6 of 1988 is hereby quashed and set aside and earlier orders granting non-agricultural use permission and re-grant of land are restored. Rule is made absolute. No costs.

[A.L. DAVE, J.]

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